IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 456 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT ELECTRICITY BOARD THRO' DY.EXECUTIVE ENG.(O&M) - Applicant(s)
Versus
LALLUBHAI BHAGABHAI GAMIT & 1 - Respondent(s)

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Appearance :

MR PREMAL R JOSHI for Applicant(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR.H.L. JANI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 06/12/2006

ORAL JUDGMENT

Gujarat Electricity Board (as it then was) is the applicant before this Court. It is the original

complainant who filed C.R. No.23 of 1993 before Mangorl Police Station, alleging theft of electric energy, which resulted into Criminal Case No.489 of 1993 before the learned JM (FC), Mangrol. Being aggrieved by the order dated 11.01.2002 passed by the learned Judicial Magistrate, First Class, Mangrol in the said proceeding, i.e. Criminal Case No.489 of 1993 the present revision is filed.

2. The learned JM (FC), Mangrol was pleased to pass order dated 11.01.2002 under sec.248(1) of the Indian Electricity Act, and was pleased to acquit the respondent-accused for the offence under section 39 of the said Act giving them benefit of doubt.

It is against this order that the present Criminal Revision Application is filed, wherein the Court was pleased to issue rule on 08.04.2003. Despite service, the respondent has chosen not to remain present before the Court. Having heard Mr.Premal Joshi, learned advocate for the applicant and taking into consideration the order passed by the learned JM (FC) and taking into consideration that the learned

JM (FC) has dealt with the matter in a very cursory manner, without going deep in the matter, it is deemed fit that the order dated 11.01.2002 be quashed and set aside.

3. Mr.Joshi relied upon a decision in the matter of **State of Gujarat Vs. Bhemji Ranchodji Patala Thakore**, reported in 1999 (2) GLR 1767. Mr.Joshi submitted that this Court has held that only on account of the fact that the Panchas have not supported the evidence of the officers of the Electricity Board, cannot be a ground for recording an acquittal giving benefit of doubt. The learned advocate submitted that this Court has held that, 'there is no rule that evidence of the prosecution witnesses cannot be accepted unless it is supported by a Panch.'

It is true that this particular decision was not cited before the learned JM (FC), but then the proposition of law is well established. 'Even in absence of corroborating evidence of a Panch, the evidence of the officers of the Electricity Board can

be relied upon and conviction can be based relying upon the evidence of the officers of the Electricity Board. This Court was pleased to observe in para 13 of the said decision as under:

> "The trial court has seriously erred in rejecting the evidence only on the ground that Panchas have not supported. The trial court ought to have taken into consideration admitted signatures on the panchnama. One of the panch has taken photographs of the line which are produced on record and that clearly shows that the panch was present. He has taken the photographs of the installation of the accused. It is to be presumed in view of sec.39, that until contrary is proved abstraction, consumption or use of energy has been dishonestly caused by such consumer. Accused has admitted in his statement that it was his electrical installation and prosecution evidence clearly reveals that by passing the meter, electricity was being abstracted from the overhead supply line of the Board by an unauthorised wire connecting the main with the private terminal of the accused. In view of this, the prosecution has discharged its duty in proving the case and the accused has failed in discharging his burden. In

the circumstances, the impugned judgement and order passed by the trial court is quashed and set aside. The accused is held guilty of an offence punishable under sec.39 of the Electricity Act." (emphasis supplied)

4. Taking into consideration that the present is the Revision Application, the matter is remanded to the learned Judicial Magistrate, First Class, Mangrol (Surat) for its de novo trial in accordance with law.

5. Taking into consideration the fact that the matter is old enough, the learned JM (FC), Mangrol (Surat) shall take the matter on priority basis and decide the same on or before 30.04.2007. The learned advocates appearing for the parties shall extend full cooperation so as to see that the aforesaid direction is complied with. The petition is disposed of accordingly. Rule is made absolute to the aforesaid extent.

(RAVI R. TRIPATHI, J.)

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